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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

TINA L. CALDWELL,

Defendant and Appellant.

2d Crim. No. B240329  
(Super. Ct. No. MA054752-02)  
(Los Angeles County)

Tina L. Caldwell appeals a judgment after pleading no contest to second degree burglary of a vehicle (Pen. Code, § 459) (count 4) and admitting a probation violation.<sup>1</sup> Following a negotiated plea agreement, the trial court sentenced her to three years in county jail for count 4 and imposed a consecutive term of eight months for the probation violation.

We conclude, among other things, that: 1) the trial court did not abuse its discretion by denying Caldwell's request to modify the sentencing portion of her plea agreement, and 2) it did not err by imposing consecutive sentences. We affirm.

**FACTS**

Caldwell, Quintasha King, and Lakesia Hardwick approached Tracy Espree regarding a gambling debt Espree owed to King. An argument ensued. King pepper

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<sup>1</sup> All statutory references are to the Penal Code.

sprayed Espree. Espree told police that the three assailants took her jewelry and her purse.

A felony complaint alleged that Caldwell committed second degree robbery (§ 211) and assault and battery (§ 242). Caldwell entered into a negotiated plea agreement. The terms were: 1) she would plead no contest to second degree burglary and receive a three-year jail sentence for that offense, and 2) she would admit a probation violation and the sentencing on that violation would be left to the trial court's discretion.

The trial court approved the plea agreement. It found Caldwell's no contest plea and her admission to the probation violation were "freely and voluntarily made."

At the sentencing hearing, Caldwell's counsel requested the trial court to place her on probation with no jail time. He said, "[She] is currently pregnant. And I . . . have two letters from pastors which say[] that she is an usher. She is a person of good moral character."

The trial court rejected this request. It sentenced her to an aggregate term of three years eight months.

## DISCUSSION

### *Abuse of Discretion by Not Altering or Modifying the Plea Agreement*

Caldwell contends the trial court abused its discretion by denying her request to modify the sentencing portion of her plea agreement and placing her on probation. We disagree.

Pursuant to her negotiated plea agreement, Caldwell agreed to a three-year sentence on the second degree robbery count and that sentencing on the probation violation would be left to the trial court's discretion. But at the sentencing hearing, her counsel asked the trial court to modify the agreement to allow her to be placed on probation. The court declined stating, "[T]his is a negotiated disposition. I am not going to alter the terms of the agreement." Caldwell has not shown that the court erred.

"Plea bargains are generally governed by a specialized form of the law of contracts." (*People v. Kim* (2011) 193 Cal.App.4th 1355, 1360.) "[L]ike the parties to a

private contract, the state and the defendant are bound by the agreement as between themselves." (*Ibid.*)

Caldwell notes that the trial court retained discretion to withdraw its approval of the plea agreement. (*People v. Daugherty* (1981) 123 Cal.App.3d 314, 321.) But that does not mean it was required to accept her request for a different result than the one she had agreed to in the plea agreement. "After the bargain has been reached, it is the trial court alone which may reject or disapprove it." (*Ibid.*) "'Whether the proffered plea was acceptable was within the exclusive discretion of the court.'" (*Ibid.*)

Citing to section 1170, subdivision (h)(5), Caldwell states the "Realignment Legislation" "grants a trial court the option . . . to impose a hybrid sentence consisting of a jail term and mandatory probation." Caldwell claims the trial court acted "under the mistaken belief that it lacked the discretion to consider probation." But she has not cited to anything in the record to support her claim that the court was unaware of its sentencing options. "[A] trial court is presumed to have been aware of and followed the applicable law." (*People v. Mosley* (1997) 53 Cal.App.4th 489, 496.) "[I]t is presumed that the trial court was aware of its sentencing discretion." (*Ibid.*) The record reflects that the court was aware of the new sentencing law because it specifically referred to "California's Criminal Realignment Act."

The People note the trial court could not have altered the sentencing portion of the plea agreement and leave the remainder intact without compromising the rights of the prosecution. If the court withdraws its approval of the plea agreement, then the parties must be "restored to their original positions." (*People v. Kim, supra*, 193 Cal.App.4th at p. 1360.) That would mean the agreement would be entirely vacated and Caldwell would be in the position she was before the agreement - facing prosecution for robbery. But she did not request to withdraw her plea agreement; she demanded that it be altered exclusively for her benefit so she would only receive probation. The court rejected probation based on her prior criminal record. Caldwell has not shown an abuse of discretion.

### *Consecutive Sentencing*

Caldwell contends the trial court "abused its discretion when it imposed a consecutive term for [her] probation violation." (Boldface omitted.) We disagree. The trial court has "broad discretion to impose consecutive sentences when a person is convicted of two or more crimes." (*People v. Shaw* (2004) 122 Cal.App.4th 453, 458.)

The trial court considered her probation violation, the current burglary offense, the probation report, and her prior criminal record. It said Caldwell "has a prior record, including petty theft, welfare fraud, another petty theft, vandalism and two unlicensed driver charges." The probation report reflects that she had been placed on probation several times between 2000 and 2011. The prosecutor said credit cards and other identification items taken from the victim "still have not been recovered" and are "marketable and can still be used, which could lead to future injury to the victim." Caldwell has not shown the court abused its discretion by imposing a consecutive sentence.

The judgment is affirmed.

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GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Hayden Zacky, Judge  
Superior Court County of Los Angeles

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